

Exhibit 5

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

JONATHON CRUZ, et al.)
Plaintiffs,)
v.)
JOHNSON MATHEY, INC.,)
UNIVERSITY OF TULSA,)
CHEVRON USA INC.,) Case No. CJ-2016-3711
CHASE ENVIRONMENTAL GROUP, INC.,)
and)
CHINA INSTITUTE OF ATOMIC)
ENERGY,)
Defendants.)

COPY

* * * * *

TRANSCRIPT OF MOTION HEARING

HAD ON THE

23RD DAY OF FEBRUARY, 2022

BEFORE THE HONORABLE WILLIAM D. LAFORTUNE

TULSA COUNTY, OKLAHOMA

* * * * *

APPEARANCES:

FOR THE PLAINTIFFS:

MR. PATRICK CARR, Attorney-at-Law
CARR & CARR
4416 South Harvard Avenue
Tulsa, Oklahoma 74135

MR. PATRICK WANDRES, Attorney-at-Law
WANDRES LAW, PC
1202 East 33rd Street
Tulsa, Oklahoma 74105

FOR THE DEFENDANT JOHNSON MATHEY, INC.:

MR. MICHAEL LINS COTT, Attorney-at-Law
DOERNER SAUNDERS DANIELS & ANDERSON
Two West Second Street, Suite 700
Tulsa, Oklahoma 74103

Reported By: Samantha S. Brown, CSR

APPEARANCES CONTINUED:

FOR THE DEFENDANT UNIVERSITY OF TULSA:

MR. RYAN RAY, Attorney-at-Law
NORMAN WOHLEGEMUTH
401 South Boston Avenue, Suite 2900
Tulsa, Oklahoma 74103

FOR THE DEFENDANT CHEVRON USA, INC.:

MS. MARY QUINN COOPER, Attorney-at-Law
McAFEE & TAFT
Two West Second Street, Suite 1100
Tulsa, Oklahoma 74103

FOR THE DEFENDANT CHASE ENVIRONMENTAL GROUP, INC.:

MR. MARK HARDIN, Attorney-at-Law
PIERCE COUCH
907 South Detroit Avenue, Suite 815
Tulsa, Oklahoma 74120

1 So, with that, it is the Plaintiffs's motion to
2 reconsider on the substantive part. So I've already
3 granted it as to the Court's error. I'm glad to hear from
4 you about why you think the motion to reconsider -- I mean
5 why the Court's order was incorrect or in error as to the
6 application of the Workers' Compensation Act exemption.

7 MR. WANDRES: Thank you, Your Honor. I won't
8 rehash all the issues we've gone through with our original
9 motions, but I just did want to, of course, reassert our
10 contention that we don't believe the exclusive remedy
11 should apply in this matter. Of course, this was argued
12 extensively well over a year ago in front of the Court.

13 But based on the *Jordan vs. Western Farmers*
14 *Electric* case, which was cited in our motion to
15 reconsider, which followed the *Price* case, points out that
16 *Price v. Howard* flowed from the summary judgment standard.
17 In here, we're dealing with a motion to dismiss standard,
18 and just like it is here in our case, there's no question
19 of fact that was at issue in that case.

20 So we believe here, just in respect to the facts
21 that we have as it stands today, that we'll be able to
22 prove that T.U. knowingly, deliberately and then thereby
23 intentionally persisted in a pattern of dangerous
24 practices to a level that would rise to the conduct of
25 being intentional. So, of course, we have not conducted

1 any discovery in this matter just as it stands today.

2 So, again, don't want to rehash the issues that
3 we argued extensively --

4 THE COURT: Right.

5 MR. WANDRES: -- back in November of 2020, but we
6 do believe that the exclusive remedy doctrine should not
7 apply in this matter.

8 THE COURT: Thank you very much, Mr. Wandres.

9 Mr. Ray, this is your -- really your issue.

10 MR. RAY: Your Honor, would you prefer me be
11 here --

12 THE COURT: Wherever --

13 MR. RAY: -- or over there?

14 THE COURT: -- wherever you're comfortable is
15 fine.

16 MR. RAY: This is fine if it's fine with Your
17 Honor.

18 THE COURT: Absolutely.

19 MR. RAY: Here's what I would say, Judge. To
20 justify a motion to reconsider, understanding the Court's
21 recognizing it over our procedural objection, the case
22 that does allow it says it's got to be clear error, which
23 means so grave that it's indisputable. Your Honor, we
24 don't think that the decision was any kind of error, but
25 it certainly isn't clear error.

1 Now, we heard Mr. Wandres, Your Honor, talk about
2 that this isn't a dismissal. Here's what I want to point
3 out to Your Honor. The Supreme Court's *Wells* case that
4 Your Honor cited said *Parret* is the standard. When we
5 look at *Parret* itself, *Parret* says -- this is a quote from
6 paragraph 11 -- that a employee plaintiff, quote, must
7 allege facts which plausibly demonstrate that the conduct
8 was intentional.

9 That's the standard that our Supreme Court says,
10 when we're looking at a petition -- and, Your Honor,
11 here's what it matters when we're talking about the grand
12 bargain, as our Courts have said in the context of
13 workers' compensation. So it makes imminent sense that,
14 to get around that which has been constitutionally and
15 statutorily enshrined for decades, that there's got to be
16 something more than just a mere invocation of this
17 standard. That's what we see there in *Parret*.

18 Now, Your Honor, what we see in these other
19 cases, all of them that the Plaintiffs have -- have cited,
20 is we see situations where there was the exact same type
21 of conduct that had persisted over an extended period of
22 time, and there were citations for the exact same
23 situation. *Wells* is a decent example. They were cited
24 for failure to use fall protection and the guy fell off
25 the very same roof they were cited on.

1 We had similar types of situations in all of
2 these other cases. I believe in *Parret* it was, hey,
3 everybody at the company knows you're going to
4 electrocuted if you go up there. Hey, we're sending him
5 anyway. Well, that's -- that's fundamentally different
6 here, Your Honor.

7 We have the Plaintiffs invoking these citations
8 that they themselves say, hey, it relates to the
9 documentation. I think there was some things about
10 storage. There's no allegation that it was the same, that
11 we had a third party on the university's premises
12 releasing a radioactive substance. That's not there.
13 They haven't alleged that.

14 They can't allege that, and so, therefore, Your
15 Honor, these cases, *Jordan*, *Wells*, *Parret*, they just don't
16 apply to this type of situation. Under the *Parret*
17 standard, there is a pleading burden that has existed for
18 a number of years, reaffirmed in *Wells*, and they haven't
19 met it. So the Court's decision wasn't clear error,
20 wasn't any kind of error.

21 It was exactly correct. And, again, a number of
22 these cases are on dismissal motions, and there is that
23 pleading burden articulated in *Parret*. So the Court's
24 decision was correct and there certainly is not a ground
25 to reconsider it under the governing standard.

1 THE COURT: Thank you, Mr. Ray. I understand
2 both sides' arguments on the motion to reconsider.

3 I think what you're saying, Mr. Wandres, is,
4 Judge, on the very broad or very lenient -- if that's the
5 right word -- standard for motions to dismiss and the
6 rules that are applicable to the motions to dismiss, that
7 it's premature to be dismissing the case, even under the
8 workers' comp exemption. And then I understand from
9 Mr. Ray's argument, obviously, what he articulated just
10 now.

11 I'm going to deny the motion to reconsider,
12 though. The Court worked very hard on that decision, read
13 all those cases that were cited and argued by the parties
14 very thoroughly, and got into the weeds of those cases and
15 the facts of those cases, the ones I cited in my order. I
16 went back through my order last night and looked at it, so
17 I feel comfortable with it.

18 Mr. Ray, you can draft the order in relation to
19 the denial of the motion to reconsider on this issue.

20 MR. RAY: I will. I will, Your Honor. I just
21 intend to stay consistent with what the Court stated on
22 the record, since we have a reporter here.

23 THE COURT: Okay. Excellent.

24 We still have the issue that they brought up in
25 their response, which, Judge, you didn't do the Lone Pine

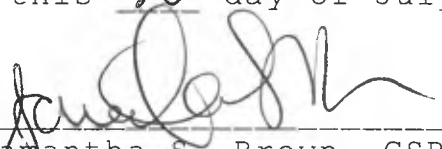
C E R T I F I C A T E

STATE OF OKLAHOMA)
) ss:
COUNTY OF TULSA)

I, Samantha S. Brown, Certified Shorthand Reporter within and for the State of Oklahoma, CSR No. 2029, do hereby certify that the foregoing is a true and correct transcription of my shorthand notes of proceedings had in Case No. CJ-2016-3711, held on the 23rd day of February, 2022, before the Honorable William D. LaFortune.

I further certify that I am not related to nor attorney for either of said parties nor otherwise interested in the event of said action.

WITNESS MY HAND, this 20 day of July, 2022.


Samantha S. Brown, CSR
Oklahoma Certified Shorthand Reporter
Certificate No. 2029
Expiration Date: December 31, 2022